

No. 503

Office Supreme Court, U.
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WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM—1925

UNITED STATES OF AMERICA,

Petitioner,

vs.

BUTTERWORTH-JUDSON CORPORATION, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the

UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

JAMES M. BECK,
Solicitor General.

Due and timely service of a copy of the within Petition for Certiorari, together with a notice that the Petition will be submitted to the Supreme Court of the United States at Washington, D. C., on Monday, May 25, 1925, at 12 o'clock noon, is hereby acknowledged.

New York, May 20, 1925.

RUSHMORE, BISBEE & STERN,
Solicitors for Receivers
Butterworth-Judson Corporation.

WHITMAN, OTTINGER & RANSOM,
Solicitors for Merchandise
Creditors Committee.

WHITE & CASE,
Solicitors for New York Trust Company
and Chase National Bank.

CARDOZO & NATHAN,
Solicitors for American Exchange
National Bank.

BREED, ABBOTT & MORGAN,
Solicitors for National Newark &
Essex Banking Company.

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Supreme Court of the United States,
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UNITED STATES OF AMERICA,

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vs.

BUTTERWORTH-JUDSON CORPORATION, *et al.*,

Respondents.

Petition for a Writ of Certiorari.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, The United States of America, respectfully petitions for a Writ of Certiorari to review, for the following reasons, a judgment of the United States Circuit Court of Appeals for the Second Circuit (in the equity suit by the Hay Foundry & Iron Works against Butterworth-Judson Corporation) affirming a final decree of the United States District Court for the Southern District of New York, denying petitioner's claim to priority over other unsecured creditors in the payment to it of debts due it from the Butterworth-Judson Corporation.

THERE IS A DIRECT CONFLICT BETWEEN THE HOLDINGS OF THE DIFFERENT CIRCUIT COURTS OF APPEALS UPON THE QUESTION HERE INVOLVED.

The judgment sought to be reviewed is based upon a prior decision to the same effect by the Circuit Court of

Appeals in the *Second* Circuit, and is in conformity with the holding of the Circuit Court of Appeals for the *Sixth* Circuit, but is in conflict with the holdings of the Circuit Courts of Appeals for the *First*, *Fifth* and *Ninth* Circuits.

1. *The question involved.* The question involved is whether under R. S. 3466, the United States is entitled to a *priority* in the payment of its indebtedness against an insolvent corporation, where the corporation, being insolvent and not having sufficient property to pay its debts, made an arrangement in advance with its creditors for one general creditor to bring a suit against it for an equity receivership, waived the objection that such plaintiff had an adequate remedy at law, consented to the appointment of a receiver for all its property, and thereby, in effect, while insolvent, applied for the appointment of a receiver for all of its property and made an assignment thereof.

2. *The diversity in the holdings of the Circuit Courts of Appeals.* The **SECOND** and **SIXTH** CIRCUITS have held that such a consent by an insolvent corporation to the appointment of an equity receiver is not the equivalent of a voluntary assignment within the meaning of R. S. 3466 (*Equitable Trust Company v. Connecticut Brass Co.*, 290 Fed. 712; *Davis v. Michigan Trust Company, Receiver*, 2 Fed. 2nd 194, now on ^{certiorari} appeal to this Court as No. 897, October Term, 1924).

On the other hand, the **FIRST**, **FIFTH** and **NINTH** CIRCUITS have held that such a consent to an equity receivership is the equivalent of a voluntary assignment and entitles the United States to obtain, in the receivership suit, a priority in the application of the assets to the payment of the Government's indebtedness (*Davis v. Pullen*, 277 Fed. 650; *Davis v. Miller Link Lumber Co.*, 296 Fed. 649; *Bramwell v. U. S. F. & G. Co.*, 299 Fed.

705, now in this Court on ~~certiorari~~^{appeal} as No. 706, October Term, 1924, and assigned for argument on November 2, 1925).

3. *The Government's interest in being heard on this question upon November 2, 1925.* The question involved here is also involved in the two cases, *supra*, now pending in this court: One on appeal (*Bramwell v. U. S. F. & G. Co.*), where the U. S. F. & G. Co. paid the Government's debt and is claiming priority by virtue of subrogation and which has been advanced and assigned for oral argument on November 2, 1925; the other on certiorari (*Davis, Director General v. Michigan Trust Company, Receiver*), where the Director General is claiming to be entitled to the priority of the United States.

In neither of those cases is the United States a party or directly represented, but on account of the identity of the questions involved and of the diversity of opinion existing in the Circuit Courts of Appeals, the United States itself should be heard upon the argument of this case which will result in an authoritative decision by this Court on this important controverted question.

WHEREFORE, the United States prays that a writ of *certiorari* shall be granted and the case advanced and assigned for oral argument on November 2nd, 1925, at the same time with the case of *Bramwell v. U. S. F. & G. Co.*

Dated May 20th, 1925.

JAMES M. BECK,
Solicitor General.

State of New York,
Southern District of New York—ss.:

EMORY R. BUCKNER, being duly sworn, says that he is United States Attorney for the Southern District of New York; that he has read the foregoing petition for a writ of *certiorari*, and that the statements contained therein are true to the best of his information and belief.

EMORY R. BUCKNER.

Subscribed and sworn to before me this
20th day of May, 1925.

GEORGE A. KUES,
Notary Public.
(Notarial Seal.)

Notice of Presentation of Petition.

Gentlemen:

Please to take notice, that the foregoing petition will be presented to the Supreme Court of the United States at the Capitol in the City of Washington in the District of Columbia, on Monday, the 25th day of May, 1925, at 12 o'clock noon.

Dated May 20, 1925.

Yours, etc.,

JAMES M. BECK,
Solicitor General.

To

RUSHMORE, BISBEE & STERN, Esqs.,
Solicitors for Receivers
Butterworth-Judson Corporation.

WHITMAN, OTTINGER & RANSOM, Esqs.,
Solicitors for Merchandise
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